

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MEMPHIS A. PHILLIP RANDOLPH
INSTITUTE, *et al.*

Plaintiffs,

v.

TRE HARGETT, *et al.*

Defendants.

Civil No. 3:20-cv-0374
JUDGE RICHARDSON
MAGISTRATE JUDGE FRENSELY

**MOTION TO VOLUNTARILY DISMISS FIRST CLAIM FOR RELIEF AND
PLAINTIFF KENDRA LEE WITHOUT PREJUDICE PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 21**

Pursuant to Federal Rule of Civil Procedure 21, Plaintiffs make this unopposed motion to voluntarily dismiss (1) the first claim for relief in their Amended Complaint, which relates to whether the application of the absentee eligibility criteria described in Tennessee Code § 2-6-201 during the pendency of the COVID-19 pandemic circumstances violates Tennessee voters' fundamental right to vote, *see* Dkt. No. 39 ("Am. Compl.") ¶¶ 71–76; and (2) Ms. Kendra Lee as a plaintiff in this matter. The Motion should be granted for the following reasons:

1. Courts in the Sixth Circuit have indicated that the dismissal of a party or an individual claim, as opposed to an action as a whole, is properly requested by a motion pursuant to Federal Rule of Civil Procedure 21, as opposed to Federal Rule of Civil Procedure 41. *See* Fed. R. Civ. P. 21 ("On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party."); *see also, e.g., Letherer v. Alger Grp., LLC*, 328 F.3d 262, 266 (6th Cir. 2003) ("[W]e think that this rule is the one under which any action to eliminate . . . a party should be taken."); *Cunningham v. Rapid Capital Funding*,

LLC/RCF, No. 3:16-cv-2629, 2019 WL 5783670 at *1 (M.D. Tenn. Nov. 6, 2019) (Richardson, J.); *United States ex rel. Doe v. Preferred Care, Inc.*, 326 F.R.D. 462, 463 (E.D. Ky. 2018). Here, Plaintiffs seek only to dismiss their first claim for relief and Ms. Lee as a party, while otherwise maintaining their remaining claims for relief against all named Defendants.

2. Plaintiffs seek to voluntarily dismiss their first claim for relief because on August 5, 2020, the Tennessee Supreme Court affirmed the expansion of Tennessee absentee voting eligibility criteria to include individuals with “special vulnerability to COVID-19” as well as their caretakers. *See Fisher v. Hargett*, No. M2020-00831-SC-RDM-CV, 2020 WL 4515279 (Tenn. Aug. 5, 2020). The opinion provides relief that is largely concurrent to that which Plaintiffs were seeking from this Court by their first claim for relief. In the interest of judicial economy and efficiency, Plaintiffs have elected to no longer pursue their first claim for relief.

3. Plaintiffs seek to dismiss Kendra Lee as a Plaintiff because Ms. Lee has asthma and bronchitis, underlying health conditions which render her more susceptible to contracting COVID-19 and place her within the category of “persons with special vulnerability to COVID-19” that are now eligible to vote by mail in the November 3, 2020 election pursuant to the Tennessee Supreme Court’s Order. As a result, Ms. Lee has also elected to no longer pursue her claims against Defendants.

4. Defendants have indicated that they do not oppose Plaintiffs’ Motion.

Accordingly, Plaintiffs, by and through their undersigned attorneys, move to voluntarily dismiss their first claim for relief without prejudice and move to voluntarily dismiss Plaintiff Kendra Lee as a party to this matter without prejudice pursuant to Rule 21 of the Federal Rules of Civil Procedure.

A proposed order for dismissal is attached hereto.

September 28, 2020

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify, that on this 28th day of September, 2020, the forgoing was filed electronically, and will be served via the Court's CM/ECF system on the following:

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